

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	
)	
)	
Plaintiff)	CIVIL ACTION NO.
)	23-CV-14021
v.)	
)	Judge Sunil R Harjani
UNITED PARCEL SERVICE,)	Magistrate Judge Gabriel A
)	Fuentes
)	
Defendant.)	
)	
=====)	
KURT BERNABEI,)	
)	
Plaintiff-Intervenor.)	
)	
_____)	

JOINT STATUS REPORT

As directed in Dkt. 80 by the Court, the parties provide the following report on discovery and settlement efforts:

Since the Joint Status Report filed on April 24, 2025, the parties have taken almost all of the approximately 25 fact witness depositions relevant to Phase 1 Aggrieved Individuals and UPS corporate policy. A few remaining depositions and continued depositions have been scheduled and the parties expect to complete these final Phase I depositions on or before June 13, 2025.

The parties have reached out Magistrate Judge Morton Denlow (Ret.) who has agreed to speak to the parties via phone on June 4, 2025 to continue attempts to resolve the case. Judge Denlow has also agreed to meet with the parties in person on July 9, 2025 if it becomes evident that a more formal mediation session is needed.

If these renewed settlement discussions are unsuccessful, plaintiff EEOC anticipates filing a motion for partial summary judgment later this summer on certain questions that may simplify further proceedings, including whether UPS engaged in a pattern or practice of discrimination and the undue hardship defense. UPS would object to the filing of any such motion because **(i)** the Complaint does not allege a pattern or practice claim; **(ii)** EEOC's answers to interrogatories seeking its basis for its ADA claims omit any reference to a pattern and practice claim; **(iii)** the Complaint alleges specific claims under 42 U.S. §12112(b)(1), (5)-(6) asserting a qualification standard claim and failure to accommodate claim, neither of which is compatible with the pattern and practice methodology; and **(iv)** the pattern and practice methodology is irreconcilable with claims under §12112(b) of the ADA because (a) it attempts to reach a finding of liability as to a class of individuals and shift the burden to the defendant to rebut this presumption; (b) any such presumption of liability is irreconcilable with the ADA, which makes clear that there is no liability under §12112(b) of the Act unless the individual in question was a qualified individual with a disability at the time of the challenged employment decision; and (c) discovery is needed on the remaining claimants to see if they were qualified individuals with a disability at the time of their alleged application for a driving position. Moreover, the pattern and practice methodology makes no sense in a case where discovery is revealing that the majority of the claimants identified by EEOC never applied for a driving job at UPS. UPS would also object to any motion filed as to an undue hardship defense for claimants for whom there has been no discovery yet. EEOC does not believe these arguments are correct and will address them at an appropriate time in the future.

The parties continue to expect to be able to meet the deadlines previously proposed in their November 1, 2024 status report for the completion of fact discovery (including discovery

regarding the remaining 22 Aggrieved Individuals), expert discovery, and dispositive motions (ECF No. 55).

Dated: May 29, 2025

Respectfully submitted,

FOR PLAINTIFF EEOC:

s/ Laurie S. Elkin

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